

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 472 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

H K DESAI

Versus

STATE OF GUJARAT

Appearance:

MR SM MAZGAONKAR for Petitioner
Mr. MA Bukhari, AGP for the respondents.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10.3.2000

CAV JUDGEMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for a writ of mandamus quashing and setting aside the impugned order dated 19.5.1986 annexure-V page 114 of the petition

passed by the respondent No. 2 and directing the respondents to pay to the petitioner his full salary and allowance for the period of suspension from 4.3.78 to 15.2.79 which was without any basis, treating the said period as duty for all purposes and directing that the leave as may be admissible to the petitioner should be granted to him for the period of his absence from 28.10.1977 to 3.3.1978. The facts giving rise to the present petition, in short, are as under:

2. The petitioner was working as Office Superintendent under the Director of Agriculture, Ahmedabad. A separate Directorate known as Soil and Water Management Directorate was established with effect from 12.10.76 by the Government. All the existing posts of Cl.I, II, III and IV were transferred under the control of the new Directorate. In addition, all the staff members working in "E" Branch of the Directorate of Agriculture, Ahmedabad were also placed under the control of the said new Directorate. It was the contention of the petitioner that he did not belong to the above category of staff and was not liable to be transferred to the Directorate of Soil and Water Management and yet, he came to be transferred in May, 1977 to the said new establishment at Palanpur which action was challenged by the petitioner and in the said litigation, interim relief against the transfer order was passed by this Court. Ultimately, said order of transfer was withdrawn by the Government and the matter was directed to be decided by the Secretary, Agriculture Forest and Coop. Deptt. and hence the petition being special civil application NO. 1161 of 1977 was withdrawn by the petitioner.

It is the case of the petitioner that in pursuance to the above directions, the petitioner was given hearing by the Secretary on 14.10.1977 but the decision thereon was not conveyed to the petitioner. It is the case of the petitioner that in June, 1977, the Director of Soil and Water Management had been given the additional charge of the Director of Agriculture, said Director who was holding the additional charge of the Directorate of Agriculture passed the order of transfer of the petitioner to the office of Divisional Soil Conservation Officer, Palanpur without conveying to the petitioner the decision of the Secretary of the Agriculture Department. Against the said transfer, the petitioner had made representation but has not joined the transferred station. Thereafter, the petitioner was placed under suspension with effect from 4.3.1978 in contemplation of proposed departmental inquiry inter alia for his not obeying the order of transfer and was served

with charge sheet on 18.3.1978 from which the petitioner came to know about the decision of the Secretary in his case which was never communicated to him. It is the further case of the petitioner that by Government Resolution dated 12.4.1978, separate Directorate of Soil and Water Management came to be abolished and it was merged with the Directorate of Agriculture i.e. the Department in which the petitioner was working. The petitioner, therefore, informed the authorities that he was willing to join at Palanpur since the basic objection raised by the petitioner against his transfer was not existing any longer while pointing out that he was not paid any subsistence allowance during the period of his suspension. The petitioner was accordingly allowed to resume the duties and was posted at the original transferred place by order dated 7.2.1979 subject to the final decision which may be taken against him in the departmental inquiry which was pending against him and also subject to the condition that the order of regularization of the period of his suspension will be passed after the result of the said departmental inquiry. The petitioner accordingly resumed the duties w.e.f.16.2.1979. Upon resumption, the petitioner applied for commuted leave on medical ground from 28.10.77 to 3.3.78 i.e. till the date of suspension which was rejected on the ground that he had not applied for leave at proper time and thereafter, the petitioner was served with second show cause notice in the departmental inquiry to show cause as to why the penalties mentioned in clause (1) to (3) i.e. minor penalty of rule 6 should not be imposed on him and why the period of his absence from 28.10.1977 to 3.3.1978 and the period from 4.3.78 to 15.2.1979 should not be treated as a period without pay which was replied by the petitioner on 14.5.1979 and thereafter, order of penalty was passed on 28.6.1979 whereby the period of his absence for the aforesaid period was treated as without pay and his absence during the period of suspension also was treated without pay and penalty of stoppage of one annual increments was passed with future effect. The petitioner retired from service on 1.9.1979. The petitioner approached the Civil Services Tribunal by filing appeal no. 204 of 1980 challenging the order of penalty which was allowed and the order of penalty dated 28.6.1979 was set aside by the tribunal on 25.9.1981. Thereafter, departmental inquiry was revived against the petitioner vide order dated 20.10.1983 passed by the Director of Agriculture, Gujarat State, Ahmedabad and the enquiry was entrusted to the Special Inquiry Officer after 11 months, on 4.9.1984. It is the case of the petitioner that the said inquiry was withdrawn on 21.12.1985. It is the further case of the

petitioner that though the inquiry was dropped, the petitioner was again served with the show cause notice to show cause as to why the period of his absence for the aforesaid period should not be treated as leave without pay and to show cause as to why the period of his suspension should not be treated as leave admissible which was replied by the petitioner on 31.1.1986. Thus, in this petition, in sum and substance, it is the grievance of the petitioner that since the departmental inquiry revived against him pursuant to the order dated 20.10.1983 was dropped on 20.12.1985, subsequent show cause notice dated 21.12.1985 was misconceived and no punishment could be imposed upon him. The petitioner has, therefore, filed the present petition challenging the action of the respondents and has prayed for the reliefs as stated above.

This petition was admitted by this Court on 15.7.1978.

The petitioner was served with the aforesaid show cause notice dated 21.12.1985 which was replied by him on 31st January, 1986 and has given detailed explanation and has denied the allegations made against him in the said show cause notice. According to the petitioner, it was requested that the illegal and wrongful transfer order dated 27.10.1977 should be cancelled and the said period should be treated to have been spent on duty and also to pay full salary for the period of suspension with interest at the rate of 12% p.a. The petitioner has also given another explanation dated 22nd February, 1986. After considering both the replies, the respondent authority passed order dated 19.5.1986 annexure "V" page 114 to the petition as per which, the period of his absence as aforesaid was treated as leave without pay and the period of suspension as aforesaid was considered as available leave, if any, in the credit of the petitioner under rule 152 Note 2 of the Bombay Civil Service Rules.

The respondents have filed affidavit in reply to the present petition on 3.3.1998 contenting inter alia that under the Gujarat Civil Service (Discipline and Appeal) Rules, 1971, the petitioner is having statutory remedy of appeal and, therefore, the present petition is required to be dismissed. It is also contended that the decision taken by the department is quite legal and valid. It is further contended that the petitioner was transferred vide office order dated 27th May, 1977 to meet with the administrative requirement and public interest. It is also contended that the action of the administration cannot be said to be vitiated on the

ground of principles of natural justice and/or illegality and / or gross procedural lapse and, therefore, the petition is misconceived in law and facts. It is also contended that Rule 17 and 107 of the Bombay Civil Service Rules provide even transfer to other organization of having pervasive and / or administrative control of the State. However, it was not a case that the petitioner was placed under deputation. It is further contended in para 8 of their affidavit in reply that the petitioner has neither complied with the orders passed by the competent authorities nor resumed the duties even after the decision of the Secretary and the State and as such, the petitioner has disobeyed the orders passed by the competent authorities. It is further submitted that after the decision of the tribunal, it was required to be decided as to whether the suspension was wholly unjustified or not and if not, then the question of no benefits and looking to the attaining the age of superannuation by the petitioner, the administration on finding that the suspension was justified, passed order in terms and conditions laid down in exercise of the powers conferred and in view of the provisions made in the Bombay Civil Service Rules and, therefore, this petition is required to be dismissed.

I have heard Mr. Mazgaonkar, the learned advocate for the petitioner and Mr. Bukhari, the learned AGP for the respondent authorities. I have also considered the averments made in the petition and also in affidavit in reply filed by the respondents. In this case, certain facts are not in dispute. The transfer order passed by the respondents was challenged by the petitioner by filing special civil application No. 1161 of 1977 and ultimately, said order was withdrawn and the petition was observed by the petitioner with certain directions of this Court that the matter be decided by the Secretary, Agriculture and Forest and Coop. Department on the basis of the relevant files. Thereafter, the respondents have passed order dated 28.6.1979 against the petitioner treating the period of his absence from 28.10.77 to 3.7.78 as leave without pay and period of suspension was treated as leave without pay and one increment was stopped with cumulative effect. Said order was challenged by the petitioner before the tribunal by filing the aforesaid appeal which was decided on 25th September, 1981 and the order dated 28.6.1979 was set aside by the Tribunal with an observation that it would be open for the respondents to take fresh action in pursuance of the chargesheet issued to the petitioner which may be open to him under the rules keeping in view that the petitioner has retired from service with effect

from 1st September,1979. It is an admitted fact that after the passing of the aforesaid order by the tribunal, the respondents have not initiated any departmental inquiry against the petitioner. Once, the order of punishment has been set aside by the tribunal with a liberty to take further action in pursuance of the chargesheet issued to the petitioner, then, it was necessary for the respondents to hold fresh departmental inquiry against the petitioner and it was required for the respondents to prove the charge levelled against the petitioner because the petitioner has denied the charges levelled against him. The respondents have, instead of carrying out this exercise, first revived the departmental inquiry against the petitioner vide order dated 20.10.1983 and entrusted the inquiry to the special inquiry officer on 4.9.1984. Subsequent thereto, the respondents dropped the inquiry on 20.12.1985 and on the very next day, issued show cause notice as stated above which was replied by the petitioner by giving two replies and thus, the procedure adopted by the respondent authorities appears to be arbitrary in as much as on one hand, they are dropping the inquiry and on the other hand, they are issuing the show cause notice dated 21.12.1985. Thereafter, the respondents passed the order dated 19.5.1986 which is under challenge. Thus, admittedly, the order dated 19th May,1986 annexure "V" page 114 has been passed against the petitioner on the basis of the same charges without holding any inquiry and, therefore, same is not sustainable in law as violative of the principles of natural justice. It was the duty of the respondents to hold fresh inquiry from the stage of chargesheet as observed by the Tribunal but instead of doing so, show cause notice dated 21.12.1985 was straightway issued to the petitioner. The respondents have not challenged the order of the tribunal before any higher forum. Thus, the action of the respondent does not appear to be in consonance with the observations made by the tribunal. It has been contended by the petitioner that the impugned order could have been justified only if the charges levelled against him were proved against him in the departmental inquiry which was revived against him. However, since the said inquiry was dropped, the respondents are not justified in passing the impugned order dated 19.5.1986 and that there was no reason for the respondents to drop and/or withdraw the inquiry which was revived against the petitioner.

I have considered the submissions from both the sides. I am of the opinion that since the tribunal has set aside the order of punishment dated 28th June,1979 while making observation that it would be open to the

respondents to take further action in pursuance of the chargesheet issued to the petitioner under the rules keeping in mind the fact that the petitioner has already retired from service with effect from 1.9.1979, the respondents were required to initiate fresh inquiry on the basis of the charges in accordance with rules and after such inquiry, it was open for the respondents to pass appropriate order against the petitioner in accordance with rules. Therefore, the action of the respondents in passing the order dated 19.5.1986 after withdrawing the inquiry is arbitrary and against the principles of natural justice and the same is required to be quashed and set aside.

In view of these facts and circumstances of the case and also in view of the fact that more than twenty years have gone after retirement of the petitioner, and also considering the decision of the tribunal, I am of the opinion that the show cause notice dated 21st December, 1985 as also the order dated 19th May, 1986 are illegal and against the principles of natural justice and hit by Art. 14 of the Constitution of India and are, therefore, required to be quashed and set aside and the petitioner is entitled to full salary and allowances for the period of suspension from 4th March, 1978 to 15th February, 1979 and is also entitled to leave as may be admissible to his credit for the period from 28th October 1977 to 3rd March, 1978.

In the result, following order is passed:

Show cause notice dated 21st December, 1985 as also the impugned order dated 19.5.1986 are quashed and set aside and the respondents are directed that the petitioner be paid full salary and allowance for the period of suspension from 4.3.78 to 15.2.79 and treating the said period as duty for all purposes. The respondents are also directed to grant leave admissible to the petitioner for the period of his absence from 28.10.1977 to 3.3.78. The respondents are directed to carry out these directions as expeditiously as possible, preferably within two months from the date of receipt of writ of this order. Petition is accordingly allowed. Rule is made absolute in terms indicated hereinabove with no order as to costs.

10.3.2000. (H.K.Rathod, J.)

Vyas